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DE RUEHRO #0355/01 0851712
ZNY CCCCC ZZH
O 261712Z MAR 09
FM AMEMBASSY ROME
TO RUEHC/SECSTATE WASHDC IMMEDIATE 1833
INFO RUEHZG/NATO EU COLLECTIVE PRIORITY
RUEHSW/AMEMBASSY BERN PRIORITY 1431
RUEHBS/USEU BRUSSELS PRIORITY 4774

C O N F I D E N T I A L ROME 000355

SIPDIS

E.O. 12958: DECL: 03/26/2014
TAGS: [PGOV](#) [PREL](#) [PTER](#) [PHUM](#) [MOPS](#) [KISL](#) [IT](#)

SUBJECT: ITALY READY TO HELP ON GUANTANAMO BAY DETAINEES

Classified By: CDA Elizabeth L. Dibble for reasons 1.4 (b) and (d).

Summary

¶1. (C) Italian Foreign Minister Frattini confirmed to S/WCI Ambassador Williamson March 24 that Italy is ready to help the United States resolve the issue of Guantanamo detainees through resettlement in Italy and advocacy for the U.S. effort within the EU. Frattini advised that there is opposition to resettlement by a number of European states due to security concerns that resettled detainees could take advantage of the borderless zone created by the Schengen Agreement. Citing his experience as a former EU Commissioner for Justice and Home Affairs, Frattini said these concerns are valid and must be addressed at a national level and by the EU. He said the EU framework agreement on the subject would need to reassure the whole that resettlement in selected European states would not adversely affect collective European security. At the national level, Frattini said that Italy would need to enact a law providing legal status for the detainees and restricting their movements outside of Italy, and assured Williamson that such a law could be adopted on a timely basis. He speculated that other European states that agree to accept detainees would need to take similar steps tailored to their respective national laws and regulations. Frattini expressed concern that the European Commissioners and EU Council officials charged with handling this matter lack a vision for winning support, and urged the United States to engage in a public awareness campaign in Europe, cautioning that the upcoming European Parliamentary elections could adversely affect consideration of the matter. He also said that U.S. agreement to resettle some detainees in America would be necessary to secure European agreement to accept detainees in Europe. On the specific issue of Italian agreement to accept two Tunisian detainees in U.S. custody subject to an outstanding arrest warrant for terrorism in Milan, a senior Justice Ministry official agreed to review alternatives to extradition. Frattini made clear Italy is on board. The next step will be translating Italian political support into concrete action at the national level.

Presidential Priority

¶2. (C) Williamson met March 24 with Foreign Minister Frattini and separately with Sergio Barbiera and Marco Peronaci, respectively the deputy chief of staff and diplomatic advisor to Justice Minister Alfano, to pursue Italian agreement to resettle detainees from the Guantanamo Bay facility, including two Tunisians in U.S. custody subject to an Italian arrest warrant, and to solicit Italian support for U.S. efforts to negotiate an EU framework agreement on the matter. Charge d'Affaires Liz Dibble joined the meeting with Frattini. Justice Department attach Don Ashley, A/DCM Barbara Leaf, S/WCI staffer Shaun Coughlin, and RSI officer

Molly Phee participated in the meeting at Justice.

13. (C) Williamson explained that on his second day in office President Obama issued three Executive Orders related to the Guantanamo Bay facility, signaling the high priority he attaches to resolving the matter. Among other directives, the Orders called for the closure of the facility within one year, and established an interagency review process under the authority of the Attorney General to conduct "fresh assessments" of the files of the 241 detainees currently held in Guantanamo. Williamson noted the significance in the shift of authority for detainee status decisions from the Defense Department to the Justice Department.

14. (C) He explained that the review process will result in a final recommendation for each detainee and described three possible courses of action: prosecution in the United States; transfer to country of origin; or resettlement in third countries. Williamson estimated that some 50-60 detainees cannot be transferred home because of reasonable fear of torture. The United States is seeking European assistance in resettling this latter category of persons. Williamson added that, in general, this population of detainees is considered to be at the "lower end of the threat scale" and consequently the United States would not ask European governments to prosecute or detain them. He noted that while the USG believed the risks associated with these individuals are very low, the United States could offer no absolute guarantees about their conduct. The nationalities of this category of detainees include Uighers, Uzbeks, Egyptians, Tunisians, Libyans, Syrians and others. He reported that 520 detainees had previously been transferred; all but 15 were returned to their home countries, including Saudi Arabia, Afghanistan, Pakistan, and Algeria. He added that approximately 20 with European citizenship or legal residence status had been transferred to Spain, France, Germany and the UK.

Two Tracks: Bilateral and EU

15. (C) Williamson reported that the United States is in an advanced state of discussions about detainee resettlement with Lithuania, Ireland, Portugal, and Switzerland. We are also engaged in serious discussions with several other states (including Spain, Belgium, Norway and Sweden). Concurrent with these bilateral discussions, we are working on a separate but complementary track with the EU Commission in pursuit of a framework agreement that would allow individual states to conclude bilateral agreements with the United States. Williamson relayed that the Czech presidency agrees the framework agreement should create a "permissive EU environment which allows member states to work out bilateral agreements with the U.S. to accept detainees." Given the one-year deadline for closure of the Guantanamo Bay facility, the United States hopes to conclude the framework agreement during the Czech presidency to avoid delay when the presidency rotates. Williamson said the U.S. was simultaneously pursuing bilateral negotiations with a number of governments, and that several have decided to accept detainees, but will not implement those decisions until an EU agreement is in place.

Request for Italian Support

16. (C) Williamson emphasized the importance to the United States of Italian support for the resettlement effort given Italy's size and role in the EU. Referring to last month's telephone conversation between President Obama and Prime Minister Berlusconi, during which the Prime Minister expressed Italy's willingness to be helpful, Williamson asked for three types of Italian support. First, the United States seeks Italian agreement to accept additional Guantanamo detainees who need to be resettled in third countries. Second, the United States seeks Italian support within the EU for a framework agreement. Third, the United States seeks Italian agreement to accept two Tunisian detainees (one held

at Guantanamo and one in Afghanistan) subject to outstanding arrest warrants for terrorism in Milan. Williamson conveyed U.S. willingness to be as helpful as possible in providing Italy with the information it needed to make a positive decision to accept detainees, including access to relevant documents and interviews with detainees. In response, Justice Official Barbiera requested a list of potential detainees to facilitate GOI review.

FM Confirms Italian Support
but Highlights Security Concerns

¶17. (C) Frattini assured Williamson of Italy's willingness to help the United States resolve this matter. Italy will agree to accept detainees and will support the U.S. effort in Brussels, but the Foreign Minister counseled that more work must be done with the EU and at the national level. Recalling his participation in the January 26 GAERC meeting that discussed the issue, Frattini reported his sense that there is a lot of opposition to resettling Guantanamo detainees in Europe. Citing the expansion of the borderless zone authorized by the Schengen Agreement, several states had expressed security concerns about the potential for unlimited movement of resettled detainees. Frattini agreed that the security concerns of Interior Ministers are valid and must be addressed. Therefore, he argued that the framework agreement, while providing for bilateral agreements with the United States, must also reassure other European states that resettlement will not adversely affect their security.

¶18. (C) Drawing on his background as a former EU Commissioner for Justice and Home Affairs, Frattini further speculated that most states that agree to resettlement will need to take national action to define the legal status of the detainees as refugees, residents or citizens. This special status should also entail restriction of their movements. Other matters that need to be addressed at a national level include surveillance, witness protection programs, and funding for these security-related activities. Frattini said that Italy had enacted such a law to handle resettlement of Palestinians associated with the 2002 siege at the Church of the Nativity, and asserted that Italy would need similar legislation to cover resettlement of Guantanamo detainees. Frattini explained his view that -- absent national action to implement restrictions on movement -- the Schengen Agreement would permit the detainees to move throughout the borderless zone. As an example, he said a former detainee resettled in Italy could get in a car and drive to Slovenia, a state that opposes resettlement. The result would be that Frattini would have to respond to a call of complaint from his Slovenian counterpart. These situations must be avoided. When Williamson expressed concern that a Parliamentary process could complicate and delay consideration of the matter, Frattini reassured him that Italy could employ a Presidential decree in a timely fashion.

¶19. (C) Frattini opined that the EU officials who met March 16 in Washington with Attorney General Holder and Deputy Secretary Steinberg -- Commissioner for Justice and Home Affairs Jacques Barrot, CT coordinator Gilles di Kerchove, and Czech Interior Minister Ivan Langer -- lacked a mandate to negotiate the matter and a vision on how to move forward. Drawing on his past experience as EU negotiator with the United States over PNR, Frattini criticized Barrot for failing to consult with the European Parliament, which he expects will desire to play a role, including adopting a resolution endorsing an EU approach to resettlement. Williamson reminded Frattini that the European Parliament had already adopted a resolution encouraging states to contribute to resolution of the matter.

¶10. (C) Frattini also recommended that the United States work with its European partners on an "awareness raising exercise," warning this issue could run afoul of the campaign for the European Parliamentary elections in June. He suggested that the United States tap the European concern about the importance of human rights in the struggle against

terrorism to win public support for European action on resettlement. Finally, he stressed that the issue of resettlement must be decided on the "basis of solidarity." (Comment: By solidarity, Frattini meant that to win support for European resettlement, the United States must also resettle detainees. End Comment.)

Tunisian Detainees

¶11. (C) To date, Embassy Rome's efforts to arrange the transfer to Italy of two Tunisian detainees held by the United States (one in Guantanamo and one in Afghanistan) and subject to arrest warrants for terrorism in Milan have foundered over the mechanism of transfer. (Note: Milan prosecutors had approached Embassy DOJ attach to request assistance in arranging the transfer of the two to Italy. End Note.) In January, the United States proposed an exchange of diplomatic notes. After an initially positive reaction by the Justice Ministry, the Foreign Ministry became engaged and the Justice Ministry subsequently revised its position and has since argued the individuals must be extradited because they are not citizens of Italy.

¶12. (C) Williamson raised this subject in some detail in his meeting with senior Justice Ministry official Barbiera. In his talk with Barbiera, Williamson explained that none of the Guantanamo detainees resettled to date had been transferred through extradition. He reported that those detainees previously transferred to Spain, France, Germany and the UK were either citizens or legal residents. Barbiera asked if any of the detainees transferred to Western Europe had been prosecuted. Williamson said that France and Spain had undertaken prosecutions; Germany and the UK had not. He also noted that the United States had resettled eight detainees in Albania who had agreed to go there voluntarily, although none of them had ties to Albania. None of these detainees were prosecuted or detained. All of the transfers thus far had been effected through an exchange of diplomatic notes. Barbiera asked whether the two Tunisian detainees had voluntarily agreed to be transferred to Italy. Williamson said that in preliminary discussions with their attorneys they had signaled a willingness to be transferred to Italy, but there was no final agreement. Justice Department attach Ashley asked Barbiera if the GOI would agree to transfer the two detainees via an exchange of notes if they voluntarily agreed to come to Italy. Barbiera said this was an interesting idea but would require further legal study. He suggested a treaty as an option; Williamson said the United States would prefer to avoid the lengthy process of negotiating a treaty. Barbiera also asked Williamson if the United States would allow Italy to serve legal documents on the two detainees. Williamson agreed to consider the request. He also told Barbiera that the United States would not be conducting any further transfers of detainees to Tunisia as we have reason to believe that one detainee previously transferred there had been tortured.

¶13. (C) In conclusion, Barbiera assured Williamson the Justice Ministry would provide as much assistance as possible to resolve the matter of transfer. While this issue was not discussed in depth in Williamson's subsequent meeting with Frattini, the Foreign Minister deferred to MOJ's stance that Italy requires they be extradited.

Comment

¶14. (C) Frattini cleared time on his schedule to meet with Williamson, and delivered a strong political message of Italian support for U.S. efforts to resolve the Guantanamo detainee issue. His views on actions needed at the EU and at a national level were couched as friendly advice. Italy will help, but transforming this political support into concrete action will require more effort. Frattini made clear that the security concerns of European Interior Ministers carry weight. This is certainly true in Italy, where the views of Interior Minister Maroni (a leader of the anti-immigrant

Northern League political party) will need to be addressed. We believe he is correct in asserting that the government will not have a problem in enacting the necessary legislation for detainees resettled here. The specific case of the two Tunisian detainees subject to Italian arrest warrants remains problematic due to the government's request for extradition, but we were encouraged by the Justice Ministry's willingness to consider alternatives to extradition. We agree with Frattini that attention to public diplomacy on this matter is merited. Our contacts want to know why the detainees are not being resettled in the United States. Continued engagement with Frattini by senior U.S. officials will facilitate his advocacy for us in EU circles.

¶15. (U) Ambassador Williamson has cleared this cable.

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